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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

In re: Application of BellSouth Corporation et al for
Provision of In-Region, Inter-LATA Services in South
Carolina, CC Docket No. 97-208

Dear Secretary Caton,

Enclosed for filing please find six copies of the public (redacted) version of the Comments of the Association for Local Telecommunications Services ("ALTS") and six copies of a confidential version of the ALTS comments. The confidential copies of the comments contain a Confidential Exhibit to an affidavit filed by Mr. Steven D. Moses. Each of the copies containing the Confidential Exhibit have been identified at the top of the first page with the legend "Confidential-Subject to Protective Order" and each page of the exhibit itself has been labeled "Confidential - Subject to Protective Order". The Confidential Exhibit has also been segregated from the remainder of the comments by a green colored sheet of paper.

Any person seeking disclosure for the Confidential Attachment should address such a request to:

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List ALTS

Should you have any other questions concerning the ALTS' Comments, please contact the undersigned at 202 400-2581. Thank you for your time and consideration.

Sincerely

Richard J. Metzger
Richard J. Metzger

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OCT 20 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application by BellSouth Corporation)
BellSouth Telecommunications, Inc.,) CC Docket No. 97-208
and BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA)
Services in South Carolina)

**COMMENTS OF THE ASSOCIATION
FOR LOCAL TELECOMMUNICATIONS SERVICES**

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October 20, 1997

SUMMARY

After explaining that its Section 271 application for South Carolina fails to comply with the Commission's Ameritech-Michigan and Oklahoma orders as to: "pricing, combinations of unbundled network elements, and certain OSS performance measurements and standards" (Brief at 19), BellSouth goes on to insist that: "No one who fully reviews this application, however, could genuinely question BellSouth's good-faith commitment to satisfying the local-market requirements of the checklist and the 1996 Act" (id. at 20).

Contrary to BellSouth's wish, it is very easy -- perhaps even unavoidable -- to question BellSouth's "good faith" in light of its confessed defiance of so many of the Commission's fundamental Section 271 rulings. It is manifestly clear that the Commission's decision in Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298, order released August 19, 1997; "Ameritech-Michigan 271 Order"), was intentionally crafted to provide specific guidance for the RBOCs to follow in order to comply with the requirements of Section 271 (id. at ¶ 6).¹

¹ See Separate Statement of Chairman Hundt: "In today's decision, we provide a detailed, comprehensive roadmap that makes clear what Bell Operating Companies (BOCs) must do in order to satisfy the open market checklist enacted by Congress in the Telecommunications Act of 1996"; Separate Statement of Commissioner Quello: "... I am pleased that [the Ameritech-Michigan 271 Order] provides Ameritech and other Bell operating
(continued...)

BellSouth has now become the third regional Bell holding company to seek in-region interLATA authority, but rather than acknowledging and complying with the requirements of Section 271 as detailed in the Commission's Ameritech-Michigan decision, BellSouth insists on proposing its own set of requirements, even though it cannot factually distinguish either the Michigan or Oklahoma situations.

The new Commission should quickly blow the whistle on this effort to carve out individually tailored Section 271 precedent unsupported by material differences. Such a result not only violates fundamental principles of adjudication, it would also unleash a storm of Section 271 activity as each RBOC, freed from any concerns about having to comply with earlier decisions, kept submitting and re-submitting applications in the hope of finally winning approval simply through the weight of numbers.

In addition to BellSouth's refusal to comply with existing Section 271 precedent, there are other fundamental defects in its application:

¹(...continued)
companies with clear guidance on the Commission's 271 review process"; Separate Statement of Commissioner Ness: "Today's decision provides valuable guidance that will help Ameritech to reach its desired goal more expeditiously"; Separate Statement of Commissioner Chong: "In today's decision, we provide significant guidance on how we view our responsibilities pursuant to section 271 of the 1996 Act."

- Because both ACSI and DeltaCom will likely qualify as facilities-based competitors under Track A -- assuming BellSouth's illegal and anticompetitive resistance of fair terms for unbundled loops and collocation is cured -- BellSouth may not proceed under Track B or Track A at this time.

- BellSouth's SGAT fails to reflect cost-based rates (as the Alabama Commission noted in its order of October 16, 1997, rejecting BellSouth's SGAT application to that agency).

- BellSouth's OSS is inadequate in a number of critical aspects (as also noted in the Alabama Commission's order of October 16, 1997).

- BellSouth fails to comply with various aspects of the competitive checklist, and its entry into in-region interLATA service in South Carolina is contrary to the public interest at this time.

While BellSouth's application could be denied for a number of reasons, ALTS urges that it be rejected for the simple and compelling reason that BellSouth has declined to comply with outstanding Section 271 precedent without showing sound and compelling factual distinctions that would justify a different result. While ALTS encourages the Commission to address the application's other defects as well, it would be a serious mistake not to include this simple, common-sense holding in order to deter the further filing of plainly unmeritorious applications. Clearly, the resources of BellSouth, as well as the Commission and all the involved parties, would be far better spent if BellSouth directed its energy to complying with existing precedent.

TABLE OF CONTENTS

SUMMARY.....	i
ARGUMENT	1
I. THE COMMISSION SHOULD NOT ALTER ITS "ROADMAP" FOR RBOC ENTRY INTO IN-REGION LONG DISTANCE SERVICE	1
A. BellSouth Is Not Currently Entitled to Proceed Under Track B in South Carolina	5
B. BellSouth's Application Fails to Contain the Performance Data for OSS or Trunk Blocking Required in the <u>Ameritech-Michigan 271 Order</u>	9
C. BellSouth's Application Fails to Comply with the Commission's Section 271 Pricing Requirements	15
1. The Commission Plainly Has Pricing Authority Under Section 271	15
2. BellSouth's SGAT Prices Are Not Cost-Based ..	20
3. BellSouth's SGAT Rates Are Not Final	21
4. BellSouth's SGAT Loop Rates Are Not Deaveraged	22
II. BELLSOUTH'S APPLICATION FAILS TO COMPLY WITH THE COMPETITIVE CHECKLIST	23
A. CLEC Experience with BellSouth OSSs Demonstrates That Those Systems Do Not Satisfy the Section 251 Requirement of Nondiscriminatory Access	23
B. BellSouth Has Failed to Show that It Can Adequately Provision Unbundled Loops	24
III. BELLSOUTH HAS FAILED TO SHOW THAT ITS APPLICATION SERVES THE PUBLIC INTEREST	25
A. The Public Interest Factors Identified in the <u>Ameritech-Michigan Order</u> Do Not Expand the Competitive Checklist	25

B.	BellSouth Has Not Shown that the Publication of its SGAT Results in a Local Market that "[I]s and Will Remain" Open to Competition	29
C.	BellSouth Is Illegally Refusing to Pay CLECs Reciprocal Compensation on Local Traffic to ISPs	30
D.	BellSouth Has Refused to Comply With Section 252(i)'s Requirement that the Provisions of Interconnection Agreements Be Made Available to All Requesting Carriers	34
CONCLUSION		37
ATTACHMENT A - EXCERPTS FROM INDEPENDENT ANALYSIS OF BELLSOUTH CLEC ORDER PROCESSING PROCEDURES		
ATTACHMENT B - BELLSOUTH LETTER REFUSING TO HONOR BELLSOUTH'S RECIPROCAL COMPENSATION AGREEMENTS FOR LOCAL TRAFFIC TO INTERNET SERVICE PROVIDERS		
ATTACHMENT C - AFFIDAVIT OF STEVEN MOSES, SENIOR VICE PRESIDENT OF NETWORK SERVICES FOR DELTACOM		

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**COMMENTS OF THE ASSOCIATION
FOR LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the revised Commission procedures for Bell operating company applications under Section 271 of the Communications Act (FCC 97-330, released September 19, 1997), and the Public Notice commencing this docket published September 30, 1997, the Association for Local Telecommunications Services ("ALTS") hereby files these comments showing why BellSouth's application for in-region, inter-LATA authority in South Carolina should be denied.

ARGUMENT

I. THE COMMISSION SHOULD NOT ALTER ITS "ROADMAP" FOR RBOC ENTRY INTO IN-REGION LONG DISTANCE SERVICE.

The Commission's decision in Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298, order released August

19, 1997; "Ameritech-Michigan 271 Order"), provided specific guidance for the RBOCs to follow in order to comply with the requirements of Section 271 (id. at ¶ 6).² As Ameritech Executive Vice President Barry K. Allen confirmed to the Senate Antitrust Committee on September 17, 1997: "Last month, in response to Ameritech's most recent long distance filing in Michigan, the FCC provided a detailed road map" (emphasis supplied).

Given Ameritech's acknowledgment that it received sufficient compliance guidance in the Ameritech-Michigan 271 Order, a belief underscored by its decision not to appeal that decision, BellSouth's current application obviously should have complied with all applicable requirements of the Ameritech-Michigan 271 Order. Instead, BellSouth has decided that it will not conform its application with those portions of the Ameritech-Michigan 271 Order with which it disagrees: "BellSouth has . . . followed the

² See also Separate Statement of Chairman Hundt: "In today's decision, we provide a detailed, comprehensive roadmap that makes clear what Bell Operating Companies (BOCs) must do in order to satisfy the open market checklist enacted by Congress in the Telecommunications Act of 1996"; Separate Statement of Commissioner Quello: "... I am pleased that [the Ameritech-Michigan 271 Order] provides Ameritech and other Bell operating companies with clear guidance on the Commission's 271 review process"; Separate Statement of Commissioner Ness: "Today's decision provides valuable guidance that will help Ameritech to reach its desired goal more expeditiously"; Separate Statement of Commissioner Chong: "In today's decision, we provide significant guidance on how we view our responsibilities pursuant to section 271 of the 1996 Act."

guidance regarding interLATA entry given by this Commission in its Michigan Order to the extent possible while preserving BellSouth's right to have a court decide whether those requirements are consistent with the Act based on the facts as they exist in South Carolina" (BellSouth Brief at ii-iii; emphasis supplied). BellSouth also points out that it has petitioned for reconsideration of certain portions of the Ameritech-Michigan 271 Order (BellSouth Brief at 20, n.15).

BellSouth's claim that "the facts as they exist in South Carolina" somehow require a different outcome from the precedents established in the Ameritech-Michigan 271 Order is utterly disingenuous. The portions of the "roadmap" disputed by BellSouth do not and could not rest on any factual distinctions between Michigan and Oklahoma, on one hand, and South Carolina on the other. Rather, they are legal and technical disagreements. For example:

- BellSouth refuses to provide OSS and trunk blocking performance measurements in its application as required by the Ameritech-Michigan 271 Order (BellSouth Brief at 26, 54-57, Stacy OSS Affidavit at ¶¶ 6, 9, 20, 31).
- BellSouth defies the Commission's interpretation of a prospective new entrant under Track A in Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC No. 97-121; released June 26, 1997; "Oklahoma Order") (BellSouth Brief at 9-10).
- BellSouth insists the Commission has no power to review the pricing of interconnection arrangements under Section

271 (BellSouth Brief at 20, n.15).

- BellSouth disagrees with the Commission's determinations concerning the legal consequences of its consultation with state commissions and the recommendations of the Department of Justice (BellSouth Brief at 6-7).

It would be a catastrophic mistake for the new Commission to permit BellSouth to relitigate these fundamental determinations under Section 271 at a time when the ILECs are also attempting to undercut the Commission's Section 251 authority.³ The Commission was clearly right as a policy matter in adopting a vigorously pro-competitive interpretation of Section 251, and the legal erosion of that stance makes it all the more important to uphold the Commission's authority under Section 271.

Beyond the clear policy need to maintain a robust interpretation of Section 271, any retreat now by the new Commission on basic Section 271 precedent would have immensely negative institutional effects. All the RBOCs, including Ameritech, would jettison the Ameritech-Michigan 271 Order, hop on a "roll-back" bandwagon, and immediately bury the Commission in an avalanche of Section 271 applications, each hoping to be granted Section 271 authority from a staff that, prevented from enforcing precedent, finds itself unable to wade through the

³ See, e.g., Iowa Utilities Board v. FCC, No. 96-3321 (order dated October 14, 1997).

morass of filings one-by-one.

In NLRB v. Wyman-Gordon Co., 394 U.S. 762 (1969), the Supreme Court explained how adjudicatory proceedings by administrative agencies create binding precedent (id. at 765-66):

"Adjudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein They generally provide a guide to action that the agency may be expected to take in future cases. Subject to the qualified role of stare decisis in the administrative process, they may serve as precedents."

Accordingly, the new Commission should firmly reject BellSouth's invitation to abandon its well-reasoned roadmap showing how an RBOC demonstrates compliance with Section 271. Instead, the new Commission should confirm the controlling nature of the Ameritech-Michigan 271 Order under Wyman-Gordon.

A. BellSouth Is Not Currently Entitled to Proceed Under Track B in South Carolina.

The issue of when an RBOC must file an application under Section 271 (c)(1)(a) ("Track A") and when it may file an application under Section 271(c)(1)(B) ("Track B") was addressed in the Oklahoma 271 Order. The Commission concluded that a carrier may not file under Track B when there is outstanding a bona fide interconnection request from a carrier that would result, if implemented, in a competing facilities-based carrier as described in Track A. Specifically, the Commission stated:

" a qualifying request under section 271(c)(1)(B) is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A). We further conclude that the request for access and interconnection must be from an unaffiliated competing provider that seeks to provide the type of telephone exchange service described in section 271(c)(1)(A). . . . [S]uch a request need not be made by an operational competing provider, as some BOCs suggest. Rather, the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." (¶ 27.)

BellSouth argues that, while it has signed dozens of interconnection agreements with potential competitors, no requesting carrier had made adequate steps toward providing facilities-based service to residential and business customers as of "3 months before the date the [Bell] company makes its application." (Brief at 10-15). Thus, according to BellSouth, it may proceed under Track B.

However, BellSouth is incorrect both as to the law and the facts in South Carolina. First, there is no "90 day cutoff" for Track A determinations. SBC contended in the Oklahoma 271 Order proceedings that a prospective new entrant had to qualify under Track A during the three month period prior to the application, or else the applicant would be entitled to proceed under Track B (id. at n.84). However, the Commission rejected this claim in finding SBC lacked the right to pursue Track B even where a new entrant did not yet comply with the requirements of Track A at

the very time an application is filed (§§ 55-56).

Second, as is demonstrated in the attached affidavit of Steven Moses, Senior Vice President of Network Services for ITC DeltaCom, DeltaCom is financially committed to providing: "wireline residential and business local exchange services throughout the State of South Carolina." (Affidavit at 10.) Facts in support of this commitment include the following (additional details are contained in DeltaCom's supplemental confidential affidavit):

- DeltaCom has been certified by the South Carolina Public Service Commission to provide competitive local exchange service.
- DeltaCom recently completed a collocation agreement with BellSouth. Negotiations for the collocation agreement took almost six months.
- DeltaCom has publicly announced its intention to offer local exchange service throughout its service area, including South Carolina.
- DeltaCom has a local service tariff for both business and residential subscribers on file with the South Carolina Commission.

These facts concerning DeltaCom are paralleled by ACSI's situation in the BellSouth region, and in South Carolina. The comments being filed on October 20, 1997, by ACSI show that it will have a switch providing local dial tone installed in South Carolina by the first quarter of 1998, and that ACSI will serve residential as well business customers when economically viable

opportunities are presented.⁴

The presence (or near-term installation) of competitive switches providing local dialtone is a significant factor under the Oklahoma 271 Order. While there are situations where Track B might still be disabled in the absence of installed facilities (particularly where the incumbent has illegally created such significant barriers to local competition that asset deployment could not currently be justified), the presence of an expensive and virtually immobile capital asset is a clear and unmistakable harbinger of facilities-based competitive entry under Track A.

Once a new entrant has made such a capital commitment, it plainly has a compelling economic incentive to generate revenues from providing services to both business and residence customers as soon as it can obtain adequate collocation and NXX facilities from the incumbent.⁵

⁴ ACSI's comments reveal that its four fiber-based SONET networks are already operational, and that a Lucent 5ESS switch will become operational in Greenville during the first quarter of 1998. Furthermore, ACSI will consider service to residential customers in South Carolina, much as it seeks to serve such customers elsewhere, providing the South Carolina Commission cures the price squeeze created by the excessive pricing of BellSouth's unbundled loops. ACSI is currently, since April 1977, reselling local service to its customers in Greenville, Spartansburg, Columbia, and Charleston in preparation for its imminent facilities-based local service.

⁵ See also the discussion (infra at Part I.C.3) explaining how the need to place expensive capital assets which cannot be easily relocated requires that potential entrants be provided (continued...)

Because neither DeltaCom nor ACSI have completed the process of implementing their interconnection and collocation agreements, a Track A application is premature at this time. Therefore, the Commission should dismiss BellSouth's current application for South Carolina.

B. BellSouth's Application Fails to Contain the Performance Data for OSS or Trunk Blocking Required in the Ameritech-Michigan 271 Order.

BellSouth's New Theory of OSS Compliance - In the course of reviewing BellSouth's brief and the affidavit of William N. Stacy concerning performance measurements, ALTS finds no claim by BellSouth that its performance measurements meet the requirements set out in the Ameritech-Michigan 271 Order.⁶ The absence of any such claim is not surprising, because BellSouth has attacked the Ameritech-Michigan 271 Order's OSS performance measurements in a Petition for Reconsideration of the Ameritech-Michigan 271 Order

⁵(...continued)
with final interconnection rates prior to making their capital commitments.

⁶ In its Ameritech-Michigan 271 Order, the Commission found that the RBOC's duty to provide nondiscriminatory access extends beyond the interface component to all aspects and functionalities of those processes, particularly the legacy systems used by the RBOC (id. at 135). Accordingly, in order for an RBOC to be able to demonstrate, through empirical evidence, that it is: "providing the items enumerated in the checklist (e.g., unbundled loops, unbundled local switching, resale services), it must demonstrate, inter alia, that it is providing nondiscriminatory access to the systems, information, and personnel that support those elements or services." (Id. at para. 132).

(at 2-6).⁷ In order to insure that BellSouth's theory of OSS compliance is not unveiled in BellSouth's reply comments for the first and only time in the present record, ALTS will address these contentions now.

The core of BellSouth's claim is that: "Although a BOC might choose to demonstrate both nondiscriminatory access to its OSSs and access to the underlying checklist item simultaneously by comparing performance for CLEC orders to performance for the BOC's own retail orders all the way from order to completion, the BOC need not do so to demonstrate the adequacy of its OSSs. As explained above, the speed and accuracy with which a BOC fills a request after it has passed through the OSSs does not pertain to the requirement of nondiscriminatory access to OSSs." BellSouth Petition for Reconsideration at 4.

Contrary to BellSouth's argument, the Commission was well within its discretion to require end-to-end performance measurements in regard to OSS compliance, rather than attempting

⁷ While BellSouth alludes to its petition for reconsideration concerning OSS compliance at one point in its brief (at 32), BellSouth's failure to set forth this theory independently in its brief violates the portion of the Ameritech-Michigan 271 Order and the new Section 271 filing rules requiring that legal contentions be fairly stated in an applicant's brief (Ameritech-Michigan 27 Order at ¶ 60): "Although we are mindful of the page limitations on the BOC applicant, we nevertheless find that evidence and arguments, as a minimum, should be referenced in the BOC's legal briefs and not buried in affidavits and other supporting materials."

to end its OSS inquiry at the OSS-UNE interface. Even if BellSouth were correct that the legal standard for UNE provisioning might differ from the legal requirements for OSS -- a contention ALTS does not concede -- BellSouth is free to quantify the effect of any such disparity in standards, and submit that analysis in showing its OSS compliance. Stated differently, if BellSouth believes it is entitled to provision UNES less efficiently than its comparable retail services, its recourse is to quantify the effects of such a legal difference, and then, in addition to submitting the end-to-end numbers, also submit numbers which back out that difference. Such an approach makes far more sense than refusing to provide end-to-end data in the first place.⁸

BellSouth also makes a remarkable argument in its Petition for Reconsideration concerning the legal standard that should be applied to OSS provisioning. According to BellSouth, any attempt by the Commission to require that BellSouth provision OSSs in a manner that would permit new entrants a meaningful opportunity to compete would require "the BOC to provide a level of access

⁸ Furthermore, end-to-end measurements are much more practical than measurements limited just to a theoretical "OSS" phase. Take the simple example of a field technician installing a loop. OSS systems generate a field order providing names, addresses, install window times, etc., which the technician continues to use throughout the course of the installation. There is no obvious place at which the OSS function terminates, and the raw provisioning of the UNE takes over, given the continued utilization of OSS-generated work materials.

superior to what the BOC itself receives" (BellSouth Petition at 5, citing to the Eighth Circuit's holding that CLECs are only entitled to access to an incumbent's existing network).

BellSouth goes on to assert that where it provides OSSs via systems originally designed for special services, the proper legal standard for such OSS systems should be determined by the level provided to access customers.

This is sheer audacity. BellSouth acknowledges it would have to provide comparable OSS performance if it allowed CLECs to use the same OSS it provides to its comparable retail services. But BellSouth refuses to allow CLECs to use either its legacy OSS systems -- claiming potential harms to customer privacy -- nor will it create any mediated access that would cure such "difficulties." Instead, it forces CLECs to use OSS systems designed for entirely different services and customers, and then insists the measure of its legal compliance in providing those systems should solely be determined by the performance achieved for those other customers. Like a restaurant charged with failing to serve healthy food, it is not a defense for BellSouth to claim that other customers have suffered as much as CLECs.

BellSouth Has Failed to Meet the Performance Measurement Requirements of the Ameritech-Michigan 271 Order - The Commission enumerated in the Ameritech-Michigan 271 Order the types of empirical data it would require to demonstrate compliance with

the requirement that the RBOCs provide nondiscriminatory access to OSS and other functions. In doing so, the Commission recognized that it must obtain data of the quantity and quality that would provide assurance that evidence of discriminatory conduct would not go undiscovered or be masked.

After receipt of extensive comments from all parties and, in particular, the Department of Justice and the State of Michigan, the Commission found that in addition to the information that it had provided in the application, Ameritech should provide data on (Ameritech - Michigan 271 Order at ¶ 212):

- (1) average installation intervals for resale;
- (2) average installation intervals for loops;
- (3) comparative performance information for unbundled network elements;
- (4) service order accuracy and percent flow through;
- (5) held orders and provisioning accuracy;
- (6) bill quality and accuracy; and
- (7) repeat trouble reports for unbundled network elements.

In its Brief, BellSouth states that it will make available three categories of performance measurements: "initial measurements that reflect the criteria historically applied to BellSouth's own retail operations; 'AT&T measurements' that have been negotiated with AT&T and incorporated into the BellSouth/AT&T interconnection agreement . . .; and generally available 'permanent' measurements, which go beyond the AT&T measurements and constitute additional evidence of BellSouth's compliance with the requirements of the Act." (BellSouth Brief

at 54.)

While the short time period for filing comments has not allowed ALTS to exhaustively review the affidavit and supporting materials supplied by BellSouth relative to its performance measures, it is clear that the performance measures BellSouth provides with its initial measures falls far short of the Commission's Ameritech-Michigan 271 Order requirements. For example, there is no information included on average provisioning intervals for unbundled network elements such as unbundled loops.

With respect to the AT&T measures -- those measures negotiated in the AT&T/BellSouth interconnection agreement -- BellSouth states that those contractual performance measurements are "available to any of the CLEC that wishes to enter into similar negotiation." (Brief at 56). Beyond the fact those measurements do not appear to satisfy the Ameritech-Michigan 271 Order, ALTS simply notes that the practical ability of other CLECs to obtain such performance measures is virtually non-existent given BellSouth's refusal to implement Section 252(i) ("pick and choose").⁹

Finally, ALTS notes that the Alabama Public Service Commission ruled October 16th concerning BellSouth's proposed SGAT that: "... BellSouth's OSS systems must be further revised

⁹ See infra at Part III.D.

to provide nondiscriminatory access to BellSouth OSS systems as required by § 251(c)(3) of the '96 Act" (Docket 25835 at 7). Furthermore, the Georgia Public Service Commission has ruled that BellSouth's current OSS performance data is inadequate, and must be substantially improved. With due respect to the South Carolina Commission's findings relating to performance data and reporting, the Commission cannot find the BellSouth performance measurements adequate in one state when other state commissions have found the same data to be inadequate.

**C. BellSouth's Application Fails to
Comply with the Commission's
Section 271 Pricing Requirements.**

**1. The Commission Plainly Has Authority
to Review Pricing Under Section 271.**

BellSouth is not shy about its differences with the Commission concerning its pricing review authority under Section 271: "There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements in the Commission's Michigan Order, particularly regarding pricing, combinations of unbundled elements, and certain OSS performance measurements and standards" (BellSouth Brief at 19). In particular, BellSouth claims that: "... because pricing matters are reserved to the States under section 252, and the checklist simply requires compliance with section 252's pricing rules, the checklist does not authorize the Commission to condition BOC interLATA entry

upon compliance with federal pricing rules"; citing to its pending Petition for Immediate Issuance and Enforcement of the Mandate filed September 18, 1997, with the Eighth Circuit in Iowa Utilities Board v. FCC, No. 96-3321. Contrary to BellSouth's claim, the Eighth Circuit's Opinion of July 18, 1997, decided two, and only two, jurisdictional issues.

First, the Eighth Circuit held that the Commission lacks jurisdiction to adopt pricing regulations that override the provisions of Section 2(b) and bind state utility commissions when they arbitrate interconnection agreements under Section 252 of the Act. The Eighth Circuit relied on the fact that Section 252(c)(2) directs the states to set prices in arbitrations "according to Section 252(d)," and that Section 252(d), in turn, lists the "requirements" that govern the setting of rates, but makes no mention of Commission regulations. 120 F.3d at 794-95. Further, while the Commission and intervenors had claimed that Sections 4(i), 201(b), 251(d), and 303(r) authorized the regulations that preemptively defined these "requirements," the Eighth Circuit held that "none of the[se] provisions" unambiguously granted the Commission authority to dictate the prices for what were held to be exclusively intrastate services. Id.

Second, the Court held that Section 208 of the Act does not give the Commission the authority to review interconnection

agreements and then to order that they be modified on the basis of the Commission's interpretation of the pricing requirements of Section 251(c) or Section 252(d). The Eighth Circuit noted that Section 252(e)(6) expressly grants this jurisdiction to federal district courts, and the Court concluded that this federal court authority is exclusive. 120 F.3d at 803.

By contrast, no issue involving the Commission's authority under Section 271 was raised by any Eighth Circuit petitioner. To the contrary, the only mention of Section 271 was to assert that the Commission would do precisely what it has now done if the Court were to hold (as it has) that the Commission lacked jurisdiction to impose pricing regulations on the states without addressing the merits of the Commission's interpretations of the pricing requirements of Section 251(c) and Section 252(d). In particular, the BOCs contended that the Commission would then apply this interpretation of the Act's pricing requirements both in determining a BOC's "compliance" with the "checklist" (Large LEC Reply Brief at 32) and in determining whether BOC's long distance entry would be in the "public interest" (Large LEC Br. at 31).

BellSouth's claim that: "the checklist does not authorize the Commission to condition BOC interLATA entry upon compliance with federal pricing rules" (BellSouth Brief at 20, n. 15), is both erroneous and irrelevant.

First, the contention is simply wrong. The Commission's Local Competition Order asserted the authority both to adopt binding rules that prescribe the methodologies under which states set rates and to enter orders under Section 208 that direct changes to state-arbitrated rates. By contrast, a Commission decision that rejects a long distance application on the ground that a BOC's prices do not satisfy the requirements of Section 251(c) or Section 252(d) would have no effect on the BOC's ability to continue to charge those prices or on the state's ratemaking standards or determinations. It simply means that the BOC will not be authorized to provide long distance services, which is a decision that Sections 271 expressly empowers the Commission to make. Further, the BOC (or the state) is free to appeal the Commission's determinations under Section 271 to the D.C. Circuit. So contrary to BellSouth's claim, it is not the case that the Ameritech-Michigan 271 Order allows the Commission to dictate the pricing principles that must be followed for a BOC to obtain long distance authority. Long distance authority will be denied on this ground only if the D.C. Circuit agrees with the Commission's conclusions that the BOC's pricing practices violate the requirements of Section 251(c) and Section 252(d).

Second, BellSouth's argument would be unfounded even if the practical effect of Section 271 decisions by the Commission and